

No. 2317

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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UNITED STATES OF AMERICA,  
Appellant,

vs.

LI CHIONG,  
Appellee.

In the Matter of the Application of LI CHIONG  
for a Writ of Habeas Corpus.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Territory of Hawaii.

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FILED  
OCT 30 1913



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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#### SERVICE OF PROCESS:

June 7, 1913: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said writ afterwards returned into Court with the following return by the said United States Marshal, to wit: "Received the within Petition, Order and Writ of *Habeas Corpus* this 7th day of June, A. D. 1913, and returned as executed, [2] June 7, 1913, in Honolulu, by hand upon Richard L. Halsey, U. S. Immigration Inspector in Charge, by exhibiting to him the Original Petition, Order and Writ of *Habeas Corpus*, and handing to him a certified copy of same. Also upon Robert W. Breckons, U. S. District Attorney, this 7th day of June, A. D. 1913, by exhibiting to him the Original Petition, Order and Writ of *Habeas Corpus*, and handing to and leaving with him a certified copy of same."

#### HEARINGS:

June 25, 1913; Hearing on Demurrer to Return and Motion for Discharge of Petitioner.

The above hearing was had before the Honorable Sanford B. Dole, Judge of said Court.

#### DECISION:

July 5, 1913: Decision Allowing Motion for Discharge and ordering Petitioner Released from Custody.

#### JUDGMENT:

July 9, 1913: Judgment filed and entered.

PETITION FOR APPEAL:

August 15, 1913: Petition for Appeal filed and order allowing same signed. [3]

United States of America,  
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; the account of the proceedings showing the service of the writ herein; the time when judgment herein was rendered and the Judge rendering the same, in the matter of the Application of Li Chiong for a Writ of *Habeas Corpus*, Number 58, in the United States District Court for the District of Hawaii.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 3d day of September, A. D. 1913.

[Seal] A. E. MURPHY,  
Clerk United States District Court, Territory of  
Hawaii. [4]

*In the District Court of the United States, in and  
for the District and Territory of Hawaii.*

In the Matter of the Application of LI CHIONG  
for a Writ of Habeas Corpus.

**Petition for a Writ of Habeas Corpus.**

To the Honorable District Court of the United States  
in and for the District and Territory of Hawaii,  
and to the Honorable SANFORD B. DOLE,  
Judge of Said Court:

The undersigned, Li Chiong, the petitioner herein,  
respectfully represents and shows to this Honorable  
Court and to your Honor as follows:

I.

That your petitioner is a Chinese citizen and subject. That heretofore, to wit, on or about the 9th day of October, A. D. 1911, your petitioner, being a Chinese subject other than a laborer, to wit, a merchant, and residing in Manila, in the Philippine Islands, and desiring and being about to come to the United States of America, applied to His Imperial Chinese Majesty's Consul General in and for the Philippine Islands (he being the official designated by the United States and authorized to issue the certificates hereinafter referred to), to obtain the permission of and be identified by the Chinese Government as entitled to come to the United States, and after receiving such permission in the form of the certificate of identity required by the laws of the United States, and identified by the Chinese Government as entitled to come to the United States as



a person other than a laborer, to wit, a merchant, thereafter, and on or about the 12th day of October, A. D. 1911, applied to the proper representative [5] of the Government of the United States in said Manila, for visé of such certificate, and such certificate was viséed by such representative of the United States Government as provided by the laws of the United States. That your petitioner thereafter departed from said Manila intending to come to the United States, first visiting his birth-place in China, where the petitioner was married, and, after recovering from a sickness which he experienced there, left China, and arrived at the port of Honolulu, Hawaii, in the United States of America, on or about the 6th day of May, A. D. 1913, on the British steamship "Persia." A copy of said certificate of identity is hereto attached, marked Exhibit "A," and which petitioner prays may be made a part of this petition as fully to all intents and purposes as if fully set out herein in words and figures.

## II.

That upon arrival at the port of Honolulu, as aforesaid on or about the 6th day of May, A. D. 1913, your petitioner was taken in charge by the Immigration Officers of the United States, and afterward conveyed to the United States Immigration Station in said Honolulu, where he is unjustly and without warrant or authority of law imprisoned, and restrained and deprived of his liberty by Richard L. Halsey, United States Immigration Inspector in Charge at the port of Honolulu aforesaid, under the claim or pretense, as petitioner is informed and be-

lieves, and so upon such information and belief alleges, that the said petitioner is within one of the classes of persons excluded from admission to the United States, to wit, a Chinese laborer, and as such not entitled to land in the United States.

### III.

That on or about the 7th day of May, A. D. 1913, your petitioner presented to the United States Immigration Officers at the port [6] of Honolulu aforesaid the certificate of identity hereinbefore referred to, and was by them examined touching his right to land in the United States. That petitioner was not given such a fair and impartial hearing as is required by laws of the United States and by the Regulations of the Department of Labor, and the said Immigration Officers did not arrive at any conclusion nor make any decision based upon the certificate presented or other evidence of record in the case, and did not give to the certificate presented the weight to which it is by law entitled, and in fact did not give to such certificate any weight whatever, but rendered a decision denying this petitioner a landing in the United States directly contrary to the said certificate and to all the evidence of record in the case.

That said Richard L. Halsey, United States Immigration Inspector in Charge at the port of Honolulu as aforesaid, without any evidence that petitioner was within any of the classes of persons excluded from admission into the United States denied this petitioner a landing, and ordered him deported to the country whence he came. From which decision and

order of deportation your petitioner appealed to the Secretary of Labor at Washington, who arbitrarily and contrary to law and to the evidence, and without any evidence that the petitioner was within any of the classes of persons excluded from admission into the United States, affirmed said decision and order of deportation.

A copy of the record of such proceedings before the Immigration Officers of the United States at the port of Honolulu, aforesaid, is hereto attached, marked Exhibit "B," and which petitioner prays may be made a part of this petition as fully to all intents and purposes as if fully set out herein in words and figures:

Petitioner does not attach a copy of the proceedings on appeal as he does not have the same, and is informed and believes, and so upon such information and belief alleges, cannot obtain the same at this time. [7]

#### IV.

Your petitioner further alleges that such certificate of identity was not controverted or the facts therein stated disproved by the United States authorities as by law provided, but, on the contrary, the said United States Immigration Officers, and the said Richard L. Halsey, United States Immigration Inspector in Charge at the port of Honolulu, aforesaid, admitted such certificate to be genuine, and such as is required by the laws of the United States to be presented by a Chinese merchant seeking admission into the United States, and admitted further that the

petitioner was and is the lawful holder of such certificate.

## V.

And your petitioner further shows that he is held in custody, detained, imprisoned and deprived of his liberty by said Richard L. Halsey in violation of the Constitution of the United States, to wit, Article 14, Constitutional Amendments, and contrary to the acts of Congress of the United States in such case made and provided, and contrary to the Treaty entered into between China and the United States of America, and is unlawfully deprived of his right to enter the United States, as petitioner is informed and believes and upon such information and belief alleges and avers, under and by virtue of the claim as aforesaid, and threatens to deport your petitioner to China by the earliest opportunity; and your petitioner further shows that said holding in custody, detention, imprisonment and threat to deport are illegal for the reasons hereinabove set forth:

WHEREFORE, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said Richard L. Halsey, United States Immigration Inspector in Charge, as aforesaid, may issue in this behalf, [8] so that your petitioner may be forthwith brought before this Honorable Court, to do, submit to and receive what the law may direct.

(Sgd.) LI CHIONG,  
Said Petitioner.

Dated, Honolulu, Hawaii, June 5, 1913.

(Sgd.) GEO. S. CURRY,  
Attorney for Petitioner.

United States of America,  
Territory of Hawaii,  
City and County of Honolulu,—ss.

And now comes Li Chiong, who being first duly sworn, upon his oath, according to law, deposes and says, that he is the petitioner named in the above foregoing petition subscribed by him; that he has heard the same read over to him and knows the contents thereof; and that the matters and things therein set forth and contained are just, true and correct, except as to those matters and things therein alleged on information and belief, and as to them he verily believes them to be true.

(Sgd.) LI CHIONG,  
Petitioner.

Subscribed and sworn to before me by said Li Chiong, this 5th day of June, A. D. 1913.

[Seal] (Sgd.) J. S. WALKER,  
Notary Public First Judicial Circuit, Territory of  
Hawaii. [9]

**Exhibit "A" [to Petition for Writ of Habeas  
Corpus—Certificate of Identity].**

ORIGINAL.

No. IX.

This certificate is issued to LI CHIONG, a Chinese subject other than a laborer, as evidence of the permission of the Chinese Government for him to go to the United States, as a means of establishing his identity, and as evidence of his right to enter and reside in the United States:



Signature of the bearer—LI CHIONG.

Full name individual—CHIONG; family—LI.

Age—22 years; height, five feet 3-1.2 inches.

Physical peculiarities—Two small moles, and pock marked in front center left ear; linear scar left middle finger; dim mole left upper lip.

Former occupation or profession—STUDENT.

When pursued—1903—1904.

Where pursued—MANILA, P. I.

How long pursued—one year.

Present occupation or profession—MERCHANT.

When pursued—Since 1904.

Where pursued—Manila, P. I.

How long pursued—7 years.

Last place of residence—#110 San Fernando Manila, P. I.

If a merchant, the following additional blanks should be filled out:

Nature of business—Grocery.

Character of business—“

Estimated value of business—peso. 20,000.00.

Style and address of firm—Kwong On Tai, 110 San Fernando, Manilo.

(If a traveller the following additional blanks should be filled out: The applicant intends to pass through travel within the United States.

Financial standing.....)

Given under my hand and official seal this 9th day of October, 1911.

[Seal]

(Signed) SUN SZE YEE,

H. I. C. M.,

Consul-General in and for the Philippine Islands.

I do hereby certify that I have examined into the truth of the statements set forth in the foregoing certificate, and found upon examination that the same are true, and that the signature and seal to the foregoing certificate are the genuine signature and seal of Sun Sze Yee, Chinese Consul-Gen.

Witness my hand and official seal this 12th day of October, 1911.

(Signed) H. B. McCOY,  
Insular Collector of Customs.

[Seal of Collector of Customs.]

[Stamps and Picture of person to whom issued attached. ] [10]

**Exhibit "B" [to Petition for Writ of Habeas Corpus—Record of Proceedings Had Before Immigration Bureau, at Honolulu.]**

COPY.

Honolulu, T. H.

Case of LI CHIONG (LEE CHONG), ex. S/S.  
"Persia," 5/6/13.

HARRY B. BROWN, Inspector.

TONG KAU, Interpreter.

Applicant presents Section Six certificate No. 9, issued by the Chinese Consul General at Manila and viséed by the Insular Collector of Customs.

Picture attached under seal, dated Oct. 12, 1911.

Applicant sworn, testifies.

Q. What are your names?

A. Li Chiong, Li Yick Foon.

Q. How old are you?      A. 24.

Q. What is your occupation?     A. Merchant.

Q. Where have you been a merchant?

A. Manila.

Q. How long were you a merchant there?

A. Since 1904.

Q. How did you first get an interest in a store there?     A. My father gave it to me.

Q. How you still an interest in a store in Manila?

A. Yes.

Q. Do you expect to return to Manila?

A. Maybe.

Q. What is the name of the store?

A. Kwong On Tai.

Q. What kind of goods do they carry?

A. Groceries.

Q. Did you work in that store?     A. Yes.

Q. Did you have any other occupation?     A. No.

Q. What is the value of your interest in this store at the present time?     A. 4,000 pesos.

Q. What do you expect to do in Hawaii?

A. Business.

Q. What store?

A. I don't know yet; I will have to look around.

Q. How much money have you with you?

A. Draft for \$1250 gold.

Q. How long do you expect to remain in Hawaii?

A. I don't know.

Q. When did you leave Manila?     A. 1911.

Q. Where have you been living at that time?

A. In my village in China.

Q. What have you been doing in the village?

A. Nothing.



Q. Are you married?     A. Yes.

Q. What is the name of your wife?

A. Wong Shee, aged 20, natural feet.

Q. When were you married?     A. 1911.

Q. What month?     A. 12th Chinese month.

Q. What is the name of your village in China?

A. Ching Foo.

Q. Have you children?

A. None at present, but one is expected soon.

Q. Where was your wife born?     A. China.

Q. Have you been in the United States before?

A. No.

Q. Are your parents living?     A. Yes.

Q. What are their names?

A. Li Hon, and mother is Ng She.

Q. Where is your father?     A. Hong Kong.

Q. What is his occupation?     A. Merchant.

Q. What store?     A. Kwong Sing Tai.

Q. If you intended to come to the United States when you left Manila, why have you waited so long?

A. I was married and last September I was taken sick.

Q. Why did you not get your section 6 certificate renewed or changed?

A. When I received this paper and went to China I intended to come here in a few months. [11]

Q. Is there any further statement you wish to make?

A. When I came this time the steamer passed Manila, and I went ashore and saw my store.

(Sgd.) LI CHIONG.

Subscribed and sworn to before me this 7th day of May, 1913.

(S) HARRY B. BROWN,  
Immig't and Actg. Chinese Insp.

"The foregoing testimony has been translated to the affiant by me and before signing he has acknowledged that it is a correct record, and that he fully understood the same.

(S) TONG KAU,  
Interpreter."

"EXHIBIT" B"—Sheet #2,  
Honolulu, T. H., May 7, 1913.  
Case of LI CHIONG

#### FINDING.

That Section Six certificate presented by this applicant was issued October 9, 1911, and signed by the Insular Collector of Customs at Manila, October 12th, 1911, that is, about one year and seven months ago, and from the testimony of the applicant he has been living in his village in China since that time but made a brief visit at his place of business in Manila while the steamer was in that port on its present voyage to the United States. As it has been a year and seven months since this applicant followed a mercantile pursuit, and as we have nothing *expect* his word that he has been doing since that time.

As there has been sufficient time for this applicant to have lost his mercantile status, I am of the opinion that he should be denied a landing and re-

turned to the country whence he came.

(Signed) HARRY B. BROWN,  
Imm't and Act'g Chinese Insp.

Approved.

(Signed) RICHARD L. HALSEY,  
Inspector in Charge.

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*District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG, for a  
Writ of Habeas Corpus.

**Order [Directing Issuance of Writ of Habeas  
Corpus, etc.].**

Upon motion of Geo. S. Curry, counsel for the petitioner [12] above named, and upon having read the within petition for a writ of *habeas corpus*, and upon the showing made, it appears to me that a writ of *habeas corpus* should issue, as prayed for in the within petition, and I do hereby order and direct that a writ of *habeas corpus* be forthwith issued out of this Court directing and commanding Richard L. Halsey, United States Immigration Inspector in Charge, at the port of Honolulu, Hawaii, to have and produce the body of the within named petitioner before this Court on Tuesday, the 10th day of June, A. D. 1913, at the hour of 10 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard.

And I do hereby further order and direct that a copy of this petition and writ be forthwith served upon Robert W. Breckons, United States District

Attorney for the District and Territory of Hawaii,  
or his deputy.

(Sgd.) S. B. DOLE,  
Judge of the District Court of the United States in  
and for the District and Territory of Hawaii.  
Dated, Honolulu, Hawaii, June 7th, 1913.

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**[Writ of Habeas Corpus and Marshal's Return  
Thereeto.]**

The President of the United States of America, to  
RICHARD L. HALSEY, Esquire, United  
States Immigration Inspector in Charge, at the  
Port of Honolulu, Territory of Hawaii.

We command you that the body of Li Chiong by  
you detained and imprisoned, as is charged, you have  
before our District Court of the United States in  
and for the District and Territory of Hawaii on  
Tuesday, the 10th day of June, A. D. 1913, at the hour  
of ten o'clock in the forenoon of said day, together  
with the cause of the detention of the said Li Chiong,  
to then and there undergo and receive what our said  
Court shall consider concerning him in [13] this  
behalf, and have you then and there this writ with  
your doings thereon, and you, Eugene R. Hendry,  
United States Marshal in and for the District and  
Territory of Hawaii, are hereby directed and *com-*  
*manded* to forthwith serve this writ.

Witness the Honorable SANFORD B. DOLE, and  
CHARLES F. CLEMONS, Judges of the District  
Court of the United States in and for the District and

Territory of Hawaii, this 7th day of June, A. D. 1913.

[Seal]

A. E. MURPHY,  
Clerk of the District Court of the United States, in  
and for the District and Territory of Hawaii.

By (Sgd.) F. L. DAVIS,  
Deputy.

U. S. Marshal's Office.

MARSHAL'S RETURN.

Received the within Petition, Order and Writ of *Habeas Corpus* this 7th day of June, A. D. 1913, and returned as executed June 7, 1913, in Honolulu, by hand upon Richard L. Halsey, U. S. Immigration Inspector in Charge, by exhibiting to him the original Petition, Order and Writ of *Habeas Corpus*, and handing to him a certified copy of same.

Dated Honolulu, T. H., June 9, 1913.

(Sgd.) E. R. HENDRY,  
United States Marshal.

Also upon ROBT. W. BERCKONS, U. S. District Attorney, this 7th day of June, A. D. 1913, by exhibiting to him the Original Petition, Order and Writ of *Habeas Corpus*, and handing to and leaving with him a certified copy of same.

(Sgd.) E. R. HENDRY,  
United States Marshal.

[Endorsed]: No. 58. Petition, Order and Writ. Filed June 7, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [14]

*In the United States District Court in and for the  
Territory of Hawaii.*

In the Matter of the Application of LI CHIONG  
for a Writ of Habeas Corpus.

**Return of Richard L. Halsey,**  
UNITED STATES IMMIGRATION INSPECTOR  
IN CHARGE AT THE PORT OF HONO-  
LULU, TERRITORY OF HAWAII, TO THE  
WRIT OF HABEAS CORPUS HERETO-  
FORE, ON THE 7TH DAY OF JUNE, A. D.  
1913, ISSUED BY THE HONORABLE SAN-  
FORD B. DOLE, ONE OF THE JUDGES OF  
THE ABOVE-ENTITLED COURT.

And by way of return to the said order and writ  
herein issued, your respondent demurs to said peti-  
tion, and for grounds of demurrer says:

First. That said petition does not state facts  
sufficient to entitle the petitioner to the relief in his  
said petition prayed for.

Second. That the said petition and the alleged  
facts therein stated show affirmatively that the said  
petitioner did not have the certificate required by  
the laws and treaties of the United States permitting  
him to land within the United States.

Third. That the said petitioner did not present  
to the proper authorities of the United States a cer-  
tificate issued by the Chinese Government and viséed  
by the endorsement of the diplomatic representative  
of the United States in China.

Fourth. That the said petitioner did not present  
a certificate as a merchant viséed by the consular



representative of the United States at the port or place from which the person named in [15] the certificate departed.

Fifth. That from the petition itself it appears that it has been duly and regularly determined by the proper immigration officials of the United States of America, that the said petitioner did not present to the proper immigration officials such a certificate as is required by the laws and treaties of the United States.

Sixth. That from the petition itself it appears that it has been duly and regularly determined by the proper immigration officials of the United States of America that the said petitioner had abandoned his intention to come to the United States subsequent to the issuance of the certificate attached to said petition.

Seventh. That from the petition itself, it appears that it has been duly and regularly determined by the proper immigration officials of the United States of America, that the said petitioner, subsequent to the issuance of said certificate, had abandoned his status as a merchant.

Eighth. That it appears from the facts set forth in said petition that the said petitioner subsequent to the issuance of the certificate attached thereto had abandoned his intention of coming to the United States.

Ninth. That this Court has no jurisdiction whatsoever in the premises.

And by way of further return, the said Richard L. Halsey alleges as follows, to wit:

First. The respondent says that petitioner being a person of Chinese descent, arrived at the port of Honolulu on or about the 6th day of May, A. D. 1913, and presented to the proper official of the United States the certificate attached to the petition in this case; that thereupon the said petitioner was duly regularly accorded a hearing as to his right to land, the said hearing having [16] been given him by Harry B. Brown, an Inspector of Chinese at the port of Honolulu; that the said hearing was fair and full in every respect; a copy of it being as set forth in the petition herein; that upon the conclusion of said hearing, the said Harry B. Brown made a finding that the said petitioner had lost any mercantile status which he may have had at the time when said certificate was issued; that thereupon the finding of the said Harry B. Brown was approved by the said Richard L. Halsey, and it was held and determined by the said Richard L. Halsey that the said petitioner had lost his mercantile status, and further, that any intention which the said petitioner might have had when departing from Manila to come to the United States had been abandoned upon his arrival at China, and further, that when the said petitioner had departed from Manila his intention was to go to China and not to the United States; that thereupon the said petitioner was by the said Richard L. Halsey denied a landing in the United States of America and ordered deported to the country whence he came; that thereupon the said petitioner appealed from the said decision of the said Richard L. Halsey to the Secretary of Labor at Washington, and that



upon said appeal the said decision was affirmed and the said appeal dismissed.

Second. That in the determination of said case, the said Richard L. Halsey did take into consideration the said certificate so presented, together with all the other evidence in the case, and did give to said certificate the weight to which he believed the same was entitled, and did determine the validity, force, weight and effect of all the evidence presented.

Third. That the allegation set forth in paragraph 1 of said petition, that the petitioner when departing from Manila intended to come to the United States is denied. That the allegation that the petitioner stopped in China for a visit is denied. That the allegation that petitioner was not given such a fair and impartial hearing as is required by the laws of the United States and by the regulation of the [17] Department of Labor is denied.

Fourth. That amongst other things held and determined by the said Richard L. Halsey, was that the petitioner was not within one of the classes of Chinese persons permitted to enter the United States.

Fifth. That each and every allegation in the petition for the writ of *habeas corpus* herein not herein expressly admitted is denied by respondent.

(Sgd.) RICHARD L. HALSEY,  
Inspector in Charge.

(Sgd.) C. C. BITTING,  
United States Attorney, for Respondent.

United States of America,  
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn accord-

ing to law, deposes and says that he is the Richard L. Halsey who has made the return to the writ of *habeas corpus* in the above-entitled cause; that he has read the said return, and knows the contents thereof, and that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 13th day of June, A. D. 1913.

[Seal] (Sgd.) WM. L. ROSA,  
Deputy Clerk, United States District Court, Territory of Hawaii.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Return of Richard L. Halsey. Filed Jun. 13, 1913.  
A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa,  
Deputy. [18]

---

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG for a  
Writ of Habeas Corpus.

**Exceptions to Demurrer-Return and Motion to  
Discharge.**

And now comes the petitioner in the above-entitled cause, by his attorney, Geo. S. Curry, and excepts to the demurrer-return filed by the respondent Richard L. Halsey, United States Immigration Inspector in Charge, and moves that it be overruled, and stricken from the files of this Court, and that the petitioner be discharged from the custody of said respondent on the grounds:

1. That the sufficiency of the petition herein was

argued before this Honorable Court, and the petition held sufficient and the writ of *habeas corpus* issued herein, and the only question attempted to be raised by such demurrer-return (paragraphs numbered 1 to 9, both inclusive) was passed upon and decided by this Honorable Court prior to the issuing of the writ of *habeas corpus* herein.

2. That it is not a proper pleading to question the sufficiency of the petition.

3. That it is not properly a demurrer since it attempts to admit some facts, to deny other, and alleges new matter.

4. That the said demurrer-return (paragraphs numbered 1 to 9, both inclusive) constitute a refusal on the part of the respondent herein to make return, in obedience to the writ of *habeas corpus*, of the cause of the detention of the petitioner. [19]

5. That the writ having issued, the only method by which the sufficiency of the petition can be attacked is by a motion to quash the writ.

WHEREFORE your petitioner prays that his exceptions to the said demurrer-return of the respondent herein be sustained, and the said demurrer-return be overruled and quashed, and that this petitioner be ordered discharged from the custody of the said respondent.

LI CHIONG,  
Said Petitioner,

By His Attorney,

(Sgd.) GEO. S. CURRY.

Honolulu, Hawaii, June 12, 1913.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Exceptions to Demurrer-Return and Motion to Dis-  
charge Petitioner. June 13, 1913.

Filed Jun. 13, 1913. A. E. Murphy, Clerk. By  
(Sgd.) F. L. Davis, Deputy Clerk. [20]

---

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG for a  
Writ of Habeas Corpus.

**Motion [for Amendment of Petition].**

And now comes the petitioner above named, and  
moves this Honorable Court that the petitioner's peti-  
tion filed herein be amended by adding thereto the  
following paragraph, to be known as paragraph  
"III-A," in the words and figures following, to wit:

"Your petitioner further alleges and says that the  
said examination and hearing of the 7th day of May,  
A. D. 1913, was not a full and fair hearing, but was  
only the semblance of a hearing, and this petitioner  
was denied and refused the right to have counsel and  
interpreter present during such examination and  
hearing in violation of his rights, and contrary to  
law, and contrary to the express instructions of the  
Department of Labor."

LI CHIONG.

By His Attorney,

(Sgd.) GEO. S. CURRY.

Honolulu, Hawaii, June 12, 1913. [21]

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG for a  
Writ of Habeas Corpus.

“III-A.”

“Your petitioner further alleges and says that the said examination and hearing of the 7th day of May, A. D. 1913, was not a full and fair hearing, but was only the semblance of a hearing, and this petitioner was denied and refused the right to have counsel and interpreter present during such examination and hearing in violation of his rights, and contrary to law, and contrary to the express instructions of the Department of Labor.”

(Sgd.) LI CHIONG.

United States of America,  
Territory of Hawaii,  
City and County of Honolulu,—ss.

And now comes Li Chiong, who being first duly sworn upon his oath, according to law, deposes and says, that he is the petitioner named in the above-entitled cause; that he has heard read over to him the above and foregoing paragraph “III-A” and knows the contents thereof, and that the matter and things therein set forth and contained are just, true and correct.

(Sgd.) LI CHIONG.

Subscribed and sworn to before me this 13th day  
of June, A. D. 1913.

[Seal]

(Sgd.) J. S. WALKER,  
Notary Public, 1st Judicial Circuit, Territory of  
Hawaii. [22]



[Endorsed]: No. 58. (Title of Court and Cause.)  
Motion to Amend Petition. June 13, 1913.

Filed Jun. 13, 1913. A. E. Murphy, Clerk. By  
(Sgd.) F. L. Davis, Deputy Clerk. [23]

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*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG for a  
Writ of Habeas Corpus.

**Traverse to Return.**

Traverse to the return of Richard L. Halsey, United States Immigration Inspector in Charge, at the port of Honolulu, Hawaii, to the writ of *habeas corpus* issued herein, before the Honorable District Court of the United States, in and for the District and Territory of Hawaii:

Comes now the said petitioner, Li Chiong, and for and in answer to the return of Richard L. Halsey, United States Immigration Inspector in Charge, at the port of Honolulu, District and Territory of Hawaii, to the writ of *habeas corpus* to him directed, in this matter, alleges and says as follows, to wit:

To the first paragraph of said return, that the petition does state facts sufficient to entitle this petitioner to the relief prayed, and it was so decided by your Honor and this Honorable Court;

To the second paragraph of said return, that he denies the allegations and averments thereof, and alleges and avers that he did have the certificate required by the laws and treaties of the United States, entitling him to land within the United States;

To the third and four paragraphs of said return, that he denies the allegations and averments thereof, and alleges and avers that he did present the certificate required by law; [24]

To the fifth paragraph of said return, that he denies the allegations and averments thereof, and alleges and says that he is informed and believes, and so upon information and belief alleges and says that the presentation of a proper certificate was, by the attorney for the respondent herein, admitted in open court;

To the sixth paragraph of said return, that he denies the allegations and averments thereof, and alleges and says that the proper Immigration Officials of the United States did not decide or determine that this petitioner had abandoned his intention to come to the United States subsequent to the issuance of the certificate attached to the petition herein, and further alleges and says that there is and was no evidence before the said Immigration Officials from which such a conclusion could be drawn;

To the seventh paragraph of said return that he denies the allegations and averments thereof, and alleges and says that the Immigration Officials of the United States did not decide that the petitioner had abandoned his status as a merchant, and further alleges and says that there is and was no evidence before the said officials from which such a conclusion could be drawn;

To the eighth paragraph of said return that he denies each and every, all and singular, the allegations and averments thereof;

To the ninth paragraph of said return, that it is a conclusion of law, and is solely for this Court to determine, and that this Court has determined that it has jurisdiction in the premises.

And the said petitioner, Li Chiong, for and in answer to the further return of the said respondent, alleges and says as follows, to wit: [25]

To the first paragraph of said further return of the said respondent herein, petitioner admits that he is a person of Chinese descent, and that he arrived at the port of Honolulu, in the Territory of Hawaii, and United States of America, on or about the 6th day of May, A. D. 1913, and presented to the proper official of the United States the certificate, a copy of which is attached to the petition herein; that this petitioner was accorded a hearing, but denies that the hearing was a full and fair hearing, and alleges and says that it was only the semblance of a hearing, and petitioner was denied the right to have counsel and interpreter present at his examination as required by law, and as by law he is entitled to; that he denies that upon the conclusion of the said hearing Inspector Harry B. Brown, or any other United States Official, held and determined that your petitioner had lost his mercantile status; that he admits that from the excluding decision rendered by the United States Immigration Officials at the port of Honolulu aforesaid, he appealed to the Secretary of Labor, at Washington, and said appeal was dismissed.

To the second paragraph of the said further return, that he denies each and every and all and singular the allegations and averments thereof, and



alleges and says that the said case was decided contrary to law contrary to all the evidence adduced, including the certificate hereinbefore referred to, and further alleges and says that there was no evidence before the United States officials to controvert the said certificate, or which in any way tended to controvert the same, and that there was no evidence before such officials to disprove the facts stated in such certificate, or which in any way tended to disprove any of the facts stated in such certificate.

To the third paragraph of said further return, that he denies each and every, all and singular the allegations and averments thereof, and alleges and says that when this petitioner left Manila, and at all times thereafter, this petitioner did intend to come to the [26] United States, and denies that he ever abandoned his intention to come to the United States;

To the fourth paragraph of said further return, petitioner denies each and every, all and singular the allegations and averments thereof, and alleges and says that there was no evidence before the United States officials to show, or which in any wise tended to show that this petitioner was within any of the classes of persons excluded from admission to the United States, and alleges that there was no evidence which in any wise tended to show that he was not within the classes of persons entitled to enter the United States.

And further answering said return and further return of the respondent herein, this petitioner alleges and says that he admits that Exhibit "A" attached to the petition herein is a true copy (except for

photograph) of the certificate hereinbefore referred to, and that the record of proceedings attached to said petition Exhibit "B" is a full, just, true and correct copy of the proceedings before the United States Immigration officials at said Honolulu.

And your petitioner further alleges and says that the certificate presented as aforesaid complied in all respects with the laws of the United States, and the regulations of the Department of Commerce and Labor, and the Department of Labor promulgated under the laws of the United States, and that the same was not controverted in any manner or the facts therein stated disproved by the United States officials or otherwise, but, on the contrary, the proceedings in this case disclose that all the evidence verified, confirmed and substantiated said certificate, and petitioner hereby calls upon the respondent herein to bring into and present to this Honorable Court the said certificate so presented as aforesaid; [27]

And petitioner further alleges and shows that he is and always has been a member of the class of persons expressly entitled to come to and reside within the United States; that he is now and has been for many years last past a merchant expressly entitled by the laws of the United States and the treaty with China to come into and reside within the United States.

And your petitioner further alleges and shows that there was and is no evidence before the United States officials, or otherwise, to show that the petitioner is within any of the classes—or persons excluded by

law from admission to the United States, and further alleges that he is not within any of the classes of persons excluded from admission to the United States, but is within the class of persons expressly entitled by the laws and treaties of the United States to come into and reside within the United States; and that he did not have a full and fair hearing as he is by law entitled to before the United States Immigration officials, but was denied the right to have counsel and interpreter present during his examination and that your petitioner was denied admission to the United States by the said respondent without a fair hearing, and contrary to the evidence, and contrary to law, and without evidence or warrant or authority of law to justify such denial, and is now held in custody, restrained of his liberty, detained and imprisoned by the said respondent without warrant or authority in law, and contrary to the constitution and laws of the United States and to the treaty between the United States and China.

And your petitioner further alleges and says that he was examined under the immigration laws of the United States, and was by the United States Immigration officers found, determined and decided and declared to be admissible under such laws, and was by them passed under such laws, as an alien entitled under such laws to admission to the United States.

[28]

This petitioner therefore alleges that the said hearing so-called and the conclusions arrived at and the order made therein are absolutely null and void as being in excess of the rights and jurisdiction of said

respondent. And petitioner prays that the said return and further return of said respondent may be adjudged to be not a proper return, and the reasons given therein are not valid and lawful, and are not sufficient in law to authorize the holding of such petitioner in such detention or the deporting of him, and that the petitioner be discharged from such custody.

(Sgd.) LI CHIONG,  
Said Petitioner.

Honolulu, Hawaii, June 13, 1913.

United States of America,  
Territory of Hawaii,  
City and County of Honolulu,—ss.

And now comes Li Chiong, the petitioner herein, and having heard read to him the above and foregoing traverse to the return in this proceeding, and the same having been translated from the English into the Chinese language and fully explained to him, upon his oath, deposes and says that the facts and statements set forth and contained therein are just, true and correct.

(Sgd.) LI CHIONG,  
Said Petitioner.

Subscribed and sworn to before me by the said Li Chiong this 13th day of June, A. D. 1913.

[Seal] (Sgd.) J. S. WALKER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

(Sgd.) GEO. S. CURRY,  
Attorney for Petitioner.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Traverse of Petitioner to the Return of Respondent.  
Filed Jun. 13, 1913. A. E. Murphy, Clerk. By  
(Sgd.) F. L. Davis, Deputy Clerk. [29]

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**[Order Continuing Hearing of Motion for Discharge  
to June 25, 1913.]**

From the Minutes of the United States District  
Court, Vol. 8, Page 563, Tuesday, June, 24, 1913.

[Title of Court and Cause.]

On this day came Mr. George S. Curry, counsel  
for the above petitioner, and also came Mr. C. C.  
Bitting, Assistant United States District Attorney,  
on behalf of the respondent herein, and this cause  
was called for hearing. Thereupon it was by the  
Court ordered that this cause be continued to June  
25, 1913, at 10 o'clock, for hearing on motion for dis-  
charge. [30]

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**[Order of Submission of Motion for Discharge.]**

From the Minutes of the United States District  
Court, Vol. 8, Page 565, Wednesday, June 25,  
1913.

[Title of Court and Cause.]

On this day came the above petitioner in person  
and with his counsel, Mr. George S. Curry, and also  
came Mr. C. C. Bitting, Assistant United States Dis-  
trict Attorney, on behalf of the respondent herein,  
and this cause was called for hearing on Motion for  
Discharge. Thereupon due argument having been



had by respective counsel, the said motion was by the Court taken under advisement. [31]

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**[Order Requiring Petitioner to Furnish a Recognizance Pending Appeal, etc.]**

From the Minutes of the United States District Court, Vol. 8, Page 572, Saturday, July 5, 1913.

[Title of Court and Cause.]

On this day came Mr. George S. Curry, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States District Attorney, on behalf of the respondent herein, and this cause was called for hearing on Motion for Discharge. Thereupon the Court read and filed its Decision herein, allowing said motion, whereupon Mr. Bitting having given notice of appeal herein, it was by the Court ordered that the said petitioner furnish a recognizance herein in the sum of \$250.00 pending such appeal. [32]

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**[Decision.]**

*In the United States District Court for the Territory of Hawaii.*

APRIL A. D. 1913 TERM.

No. 58.

In the Matter of the Application of LI CHIONG,  
for a Writ of Habeas Corpus.

July 5, 1913.

Upon this application for a writ of *habeas corpus*, the immigration inspector in charge gave as a rea-

son for refusing admittance to the petitioner, that from the petition itself it appears that it was decided by such immigration inspector that the petitioner did not present a certificate issued by the Chinese Government viséed by the diplomatic representative of the United States in China; also that the petitioner did not present a certificate as a merchant viséed by the consular representative of the United States at the port or place from which the person named in the certificate departed; also that the petitioner did not present to the proper immigration officials such a certificate as is required by the laws and treaties of the United States; also that it appears from the petition itself that the petitioner had abandoned his intention of coming to the United States subsequent to the issuance of the certificate; also that it appears [33] from the petition itself that it had been determined by such immigration inspector in charge that the petitioner, subsequent to the issuance of such certificate, had abandoned his status as a merchant.

It appears by the copy of the certificate submitted with the petition that it was issued by His Imperial Chinese Majesty's Consul General in and for the Philippine Islands and that it was viséed by H. B. McCoy, Insular Collector of Customs at Manila.

Rule 11c of the Regulations governing the admission of Chinese provides as follows:

“The governor of the Philippine Islands having, by executive order No. 38, of September 23, 1904, designated the collector of customs, Manila, to issue to Chinese citizens of those islands the certificate

provided by section 6 of the act of July 5, 1884, and it being practicable to require that such certificates shall be viséed, officers at ports of entry for Chinese will regard certificates issued to such Philippine citizens in the same manner as certificates issued by officials of foreign countries and viséed by American diplomatic or consular officers. Certificates issued by the Chinese Consul-General, Manila, to subjects of the Chinese Empire residing in the Philippines will be viséed by the collector of customs at Manila, and when so viséed will be accorded the usual consideration."

From this it appears that the rule has been exactly followed in regard to the issue and visé of the certificate in question. [34]

As to the other points, that the petitioner had abandoned his intention to come to the United States subsequent to the issuance of the certificate, there is no rule or statute that I am aware of which limits the life of such certificate or provides that if not used within a certain time it shall become invalid. And as to the point that the petitioner, subsequent to the issuance of such certificate abandoned his status as a merchant, I find in section 6 of the act of 1882, as amended by the act of 1884, that "such certificate viséed as aforesaid shall be *prima facie* evidence of the facts set forth therein and shall be produced to the Chinese inspector in charge at the port of the district of the United States at which the person named therein shall arrive \* \* \* and shall be the sole evidence permissible on the part of the person so producing the same to establish the right



of entry into the United States; and said certificate may be controverted and the facts therein stated disproved by the United States authorities."

From this we find that all that the petitioner had to do was to produce his certificate. In fact, he should not have been permitted to do anything more than to exhibit his certificate, leaving it to the Government to controvert and disprove the same. This has not been done, except as the Government may have considered the petitioner's testimony to have controverted and disproved the certificate and the facts therein stated, which cannot be said to have happened. The inspector in charge has, in the view of this Court, mistaken the law of the case.

The petitioner is therefore discharged from the custody of the respondent.

(Sgd.) SANFORD B. DOLE. [35]

[Endorsed]: No. 58. (Title of Court and Cause.)  
Decision. Filed Jul. 5, 1913. A. E. Murphy, Clerk.  
By (Sgd.) F. L. Davis, Deputy Clerk. [36]

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*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

In the Matter of the Petition of LI CHIONG, for a  
Writ of Habeas Corpus.

### **Judgment.**

At the regular April, A. D. 1913, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said Court in Honolulu, City and County of Honolulu, in the Territory of Hawaii and District of

Hawaii, on Saturday, the 5th day of July, A. D. 1913, the above-entitled cause, having heretofore been heard on the pleadings and arguments by counsel for the respective parties and due deliberation had thereon, the Court finds that the above-named petitioner, Li Chiong, is entitled to be discharged herein, subject to the taking of an appeal, in which case he may be released upon giving recognizance with sureties in the sum of TWO HUNDRED AND FIFTY DOLLARS (\$250.00) to answer the judgment of the Appellate Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above named petitioner Li Chiong be and he is hereby discharged from custody herein, subject to the taking of an appeal, and subject to exceptions by the United States of America.

And the Court being advised that the above-entitled cause will be removed to the Appellate Court by proper proceedings to be had in that behalf,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the above named petitioner, Li Chiong, give his recognizance with surety in the sum and amount of TWO HUNDRED AND FIFTY DOLLARS (\$250.00), to answer the judgment of the Appellate Court, and that upon the giving of such recognizance the said petitioner, Li Chiong, be released from custody. [37]

Given, made and dated, at Honolulu, City and County of Honolulu, Territory and District of Hawaii, this 5th day of July, A. D. 1913.

(Sgd.) S. B. DOLE,

Judge of said Court.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Judgment Entered in J. D. Book 2, at folio 428.  
Filed Jul. 9, 1913. A. E. Murphy, Clerk. By (Sgd.)  
Wm. L. Rosa, Deputy Clerk. [38]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

**Petition for Appeal.**

To the Honorable SANFORD B. DOLE, Judge of  
the Above-entitled Court:

THE UNITED STATES OF AMERICA, by its  
attorney C. C. BITTING, conceiving itself aggrieved  
by the order and judgment made and entered on the  
9th day of July, A. D. 1913, in the above-entitled  
proceeding, does hereby appeal from the said order  
and judgment to the Circuit Court of Appeals for the  
Ninth Circuit, and files herewith its assignment of  
errors intended to be urged upon appeal, and it  
prays that its appeal may be allowed, and that a  
transcript of the record of all proceedings and papers  
upon which said order and judgment was made, duly  
authenticated, may be sent to the Circuit Court of  
Appeals for the Ninth Circuit of the United States.

Dated this 15th day of August A. D. 1913.

(Sgd.) C. C. BITTING,  
Assistant U. S. Attorney.

Received a copy of the above petition.

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By his Attorney,

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[Endorsed]: No. 58. (Title of Court and Cause.)  
Petition for Appeal. Filed Aug. 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [39]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

**Order Allowing Appeal.**

Upon application and motion of C. C. BITTING,  
Assistant United States Attorney for the Territory  
of Hawaii:

IT IS HEREBY ORDERED that the petition for  
appeal heretofore filed herein by the United States  
of America be, and the same is hereby granted; and  
that an appeal to the United States Circuit Court of  
Appeals for the Ninth Circuit from the final order  
and judgment heretofore, on July 9, 1913, filed and  
entered herein, be, and the same is hereby allowed,  
and that a transcript of the record of all proceedings  
and papers upon which said final order and judgment  
was made duly certified and authenticated, be trans-  
mitted, under the hand and seal of the Clerk of this  
Court, to the United States Circuit Court of Appeals  
for the Ninth Judicial Circuit of the United States,  
at San Francisco, in the State of California.

Dated this 15th day of August, A. D. 1913.

(Sgd.) S. B. DOLE,  
Judge U. S. District Court.

Received a copy of the above order.

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By his Attorney,

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[Endorsed]: No. 58. (Title of Court and Cause.)  
Order Allowing Appeal. Filed Aug. 15, 1913. A.  
E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [40]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

**Assignment of Errors.**

And now comes the United States of America, by  
C. C. BITTING, its attorney, and says that in the  
record and proceedings in the above-entitled matter  
there is a manifest error, and that the final record  
and judgment, made and entered in said matter on  
the 9th day of July, A. D. 1913, is erroneous and  
against the just rights of the said United States, in  
this, to wit:

First. That the Court was without jurisdiction to  
entertain the application for the writ of *habeas cor-  
pus*.

Second. That the merchant certificate presented  
by the applicant did not comply with the provisions  
of law in that it was not issued by the endorsement  
of the Diplomatic Representative of the United  
States at the port or place from which the person



named in the certificate was about to depart.

Dated this 15th day of August, A. D. 1913.

(Sgd.) C. C. BITTING,

Assistant United States Attorney.

Received a copy of the above assignment of errors.

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By his Attorneys,

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[Endorsed]: No. 58. (Title of Court and Cause.)  
Assignment of Errors. Filed Aug. 15, 1913. A. E.  
Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy  
Clerk. [41]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

**Citation on Appeal.**

United States of America,—ss.

The President of the United States, to Li Chiong,  
Greeting:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Appeals  
for the Ninth Circuit to be held at city of San Fran-  
cisco, in the State of California, within thirty days  
from the date of this writ, pursuant to an order  
allowing an appeal, filed in the clerk's office of the  
United States District Court for the Territory of  
Hawaii, wherein the United States of America is ap-  
pellant, and you, Li Chiong, are appellee, to show



cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. [42]

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 15th day of August, A. D. 1913, and of the Independence of the United States the one hundred and thirty-eighth.

S. B. DOLE,

Judge U. S. District Court, District of Hawaii.

[Seal]

Attest: A. E. MURPHY,

Clerk U. S. District Court, District of Hawaii.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Citation on Appeal. Filed August 15, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [43]

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*In the United States District Court for the Territory  
of Hawaii.*

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

**Praeceptum for Transcript.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition for a writ of *habeas corpus*, filed June 7, 1913.
2. Return of Richard L. Halsey, filed June 13, 1913.
3. Exceptions to demurrer—return and motion to discharge petitioner, filed June 13, 1913.
4. Motion to amend petition, filed June 13, 1913.
5. Traverse of petitioner to the return of respondent, filed June 13, 1913.
6. Decision, filed July 5, 1913.
7. Judgment discharging applicant, filed July 9, 1913.
8. Petition for appeal, filed Aug. 15, 1913.
9. Assignment of errors, filed Aug. 15, 1913.
10. Order Allowing appeal, filed Aug. 15, 1913.
11. Citation, filed Aug. 15, 1913.
12. All minute entries in above-entitled cause.
13. This praecipe.

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, before the ——— day of ———, A. D. 1913. [44]

THE UNITED STATES OF AMERICA.

By (Sgd.) C. C. BITTING,  
Assistant United States Attorney.

[Endorsed]: No. 58. (Title of Court and Cause.)  
Praecipe for Transcript. Filed Aug. 8, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [45]

**[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]**

*In the United States District Court in and for the  
District and Territory of Hawaii.*

No. 58.

In the Matter of the Application of LI CHIONG for  
a Writ of Habeas Corpus.

United States of America,  
District of Hawaii,—ss.

I, A. E. Murphy, Clerk of the District Court of the United States for the District of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 46, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the Matter of the Application of Li Chiong for a Writ of *Habeas Corpus*, as the same remains of record and on file in my office, and I further certify that I hereunto annex the original Citation on Appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$10.65, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 3d day of September, A. D. 1913.

[Seal]

A. E. MURPHY,  
Clerk, United States District Court, Territory of  
Hawaii. [46]

[Endorsed]: No. 2317. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Li Chiong, Appellee. In the Matter of the Application of Li Chiong for a Writ of *Habeas Corpus*. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Received and filed September 15, 1913.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

No. 2317.

6

IN THE

**UNITED STATES CIRCUIT COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Appellant,*

vs.

LI CHIONG,

*Appellee.*

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IN THE MATTER OF THE APPLICATION OF  
LI CHIONG FOR A WRIT OF HABEAS CORPUS.

**BRIEF OF APPELLANT**

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STATEMENT OF THE CASE.

This is an appeal from the judgment of the District Court of the Territory of Hawaii discharging Li Chiong, a Chinese citizen and a person of Chinese descent, upon a writ of *habeas corpus* from the custody of the immigration authorities who held the said Li Chiong in custody for the purpose of preventing him from entering the United States under the Chinese Exclusion Act.

The facts of the case are few and simple. Li Chiong presented himself for admission to the

United States to the immigration inspector at the port of Honolulu and demanded admission to the United States by reason of a certificate, commonly called a section 6 certificate, issued by the Chinese Consul-General at Manila and viséed by the Insular Collector of Customs at that port, certifying that the said Li Chiong was a merchant, and was interested in a business firm in Manila and had pursued the occupation of a merchant since 1904. This certificate was issued October 9, 1911, and viséed by the Insular Collector of Customs October 12, 1911. The petitioner, according to his own testimony, given to the immigration inspector, immediately upon receiving said certificate, left for China and resided in his village, Ching Foo, where he was married and lived up to the time he took passage for the United States. During the time he was in China he claims to have been doing nothing. On coming to the United States he had to pass through Manila and states that while the steamer was stopping at Manila he went ashore and visited his store.

At the time of applying for admission he claims to have been 24 years old and that he has been engaged in the mercantile business since 1904. His application for admission was made on the 7th day of May, 1913, so that at the time he became a merchant he was fifteen years of age. The only allegation of unfair hearing in the petition is that immigration authorities refused to give the said certificate the weight to which they claim it is entitled in law.

From the transcript it appears that the written



notice of motion to amend the petition so as to show some further particulars in which it was claimed that the petitioner was denied a fair hearing by the immigration authorities was filed with the clerk of the court but it nowhere appears that said motion was ever presented to the court for its ruling or that said petition was amended so as to include these other matters and no evidence appears in the transcript showing that it was considered by either party as of any consequence.

The immigration authorities denied the petitioner the right to land under a section 6 certificate on the ground that it had been a year and seven months since the certificate had been issued and that the testimony of the applicant showed that he had not visited his business except for a brief visit made while the steamer was stopping at the port of Manila on his voyage to the United States and that he has not followed a mercantile pursuit during said year and seven months and there was nothing to indicate except his word that he would follow a mercantile pursuit if he should enter the United States and therefore concluding that he had lost his mercantile status through his failure to follow it during this period of a year and seven months.

The court's opinion holds that the certificate is *prima facie* evidence of the petitioner's right to enter the United States, that there is no limit of time within which the same must be used, and that the immigration authorities had failed to produce satisfactory evidence to controvert the facts set forth in

the certificate to show that the alien had lost his mercantile status.

### THE LAW OF THE CASE.

The appellant contends that the order of the court below discharging the petitioner on a writ of *habeas corpus* should be reversed and the petitioner remanded to the custody of the immigration authorities for deportation, for the reason that the court had no jurisdiction to entertain the petition under the allegations thereof.

Section 6 of the Act of May 6, 1882, as amended by the Act of July 5, 1884, is as follows:

Sec. 6. That in order to the faithful execution of the provisions of this act, every Chinese person other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid; provided, that nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word "merchant," hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired.

The certificate provided for in this act, and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be viséed by the indorsement of the diplomatic representatives of the United States in the foreign country from which such certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same.

Such certificate viséed as aforesaid shall be *prima facie* evidence of the facts set forth therein, and shall be produced to the Chinese inspector in charge of the port in the district in

the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities.

It will be observed that there is no allegation in the petition alleging a denial of a fair hearing to the petitioner on the part of the immigration authorities. There must be a direct and positive averment of a denial of a fair hearing by the immigration authorities in order to give the court jurisdiction.

*United States vs. Ju Toy*, 198 U. S. 253, 40 L. Ed. 1040;

*United States vs. Sing Tuck*, 194 U. S. 168;

*United States vs. Chin Yow*, 208 U. S. 8.

*Lem Moon Sing vs. United States*, 158 U. S. 538, 39 L. Ed. 1082;

*United States vs. Gin Fung*, 100 Fed. (9th C. C. A.) 389.

The court may not look into the record for the purpose of ascertaining whether or not there was any evidence against the alien. The burden of proof is upon the alien to establish his right to enter and if the immigration authorities refuse to believe the evidence presented by him, they may deny him his right to enter.

"Of course, if the writ is granted, the first issue to be tried is the truth of the allegations last mentioned. If the petitioner was not denied a fair opportunity to produce the evidence that

he desired, or a fair though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the district court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would not be established simply by proving that the Commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced."

\* \* \* \* \*

"We recur in closing to the caution stated at the beginning, and add that, while it is not likely, it is possible, that the officials misinterpreted rule 6 as restricting the right to obtain witnesses which the petitioner desired to produce, or rule 7, commented on in *United States vs. Sing Tuck*, 194 U. S. 161, 169, 170, 48 L. ed. 917, 921, 24 Sup. Ct. Rep. 621, as giving them some control or choice as to the witnesses to be heard. But, unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and, we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

*United States vs. Chin Yow, supra.*

"But jurisdiction is given to the collector over the right of the alien to land and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to controvert it, and we cannot assent to the proposition that an officer or tribunal invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence, or

by rejecting proper evidence, or by admitting that which is improper."

*Lee Lung vs. Patterson*, 186 W. S. 168, 46 L. Ed. 1108.

This decision related to the question of an admission under a section 6 certificate and the order of the immigration authorities, to wit, the collector of the port, excluding the alien was upheld and the court refused to take jurisdiction and discharge the petitioner on a writ of *habeas corpus*.

The very wording of the act itself provides that the certificate is only *prima facie* evidence of the right of the Chinese person to land and that the same may be controverted.

If the evidence given by the alien is such that the immigration authorities come to the conclusion that it overcomes the *prima facie* case, made out by the certificate, the courts have no jurisdiction to review his action.

*Lee Lung vs. Patterson*, 186 U. S. 168, 46 L. Ed. 1108.

Should the court be of the opinion that it has jurisdiction to look into the record of the immigration authorities to ascertain whether or not there was any evidence to controvert the *prima facie* showing made by the section 6 certificate presented by Li Chiong we contend that the testimony of Li Chiong as presented by the transcript was sufficient for the immigration authorities to exclude him from the United States, bearing in mind always the state-



ments above quoted from the decisions of *Lee Lung vs. Patterson, supra*, and *United States vs. Chin Yow, supra*, in which it is specifically laid down that in order to give the court jurisdiction it is not sufficient to merely show that the decision of the immigration authorities was erroneous.

The evidence shows:

First: That he departed from a port in the Empire of China for the United States instead of departing from the port of Manila where his certificate was issued;

Second: That he lived in China after leaving Manila for a year and seven months, during which time he followed no mercantile pursuit;

Third: That considering his youth and the fact that he was paying no attention to the business during the year and seven months he was in China his interest in the firm was not in fact a substantial interest.

Fourth: That in coming to the United States he had no idea as to what occupation or business pursuit he would follow in the United States;

Fifth: That he was delayed on account of sickness is not borne out by the fact that he did not take sick for nearly a year after he left Manila;

Sixth: No reasonable explanation is given by the applicant for not having taken out a new section six certificate at the port in China from which he departed for the United States or not having taken out a new certificate in Manila showing his mercantile status there.

These facts clearly appearing from the testimony of Li Chiong even if it be considered that a total lack of evidence would entitle the court to review the decision of the immigration authorities can it be said that there is such a lack of evidence as to give the court jurisdiction.

We contend that upon the facts presented the decision of the immigration authorities was correct that the alien had lost his mercantile status at the time he applied for admission at Hawaii. But even if the court is inclined to disagree with the immigration authorities as to the conclusion of fact upon which they excluded Li Chiong from admission to the United States, yet that is not a ground upon which the court can take jurisdiction and discharge the petitioner upon a writ of *habeas corpus*.

We contend, therefore, that the judgment of the court below discharging Li Chiong should be reversed and the alien remanded to the custody of the immigration authorities for deportation to China.

Respectfully submitted,

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